

## II. Remarks

### A. Status of the Claims

Claims 2-22, 26-43, 46-56, 60-62 and 64-79 are currently pending. Claims 1, 23-25, 44-45, 57-59 and 63 were previously cancelled. Claims 39 and 74 have been amended without prejudice. Support for the amendments can be found in the application as originally filed, specifically, e.g., at paragraphs [0085]-[0086]. Applicants respectfully submit that no new matter has been added by virtue of this amendment.

### B. Claim Rejections Under 35 U.S.C. § 103(a)

- a. Rajkumar in view of Buyya et al. in view of Ahamed et al. further in view of Tayyar et al.

In the Final Office Action, the Examiner rejected claims 2-3, 22, 26-28, 35-36, 38-43, 46-47, 55-56, 60-62, 70-71 and 73-79 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0061260 to Rajkumar in view of “A Case for Economy Grid Architecture for Service Oriented Grid Computing”, *Parallel and Distributed Processing Symposium*, Proceedings 15<sup>th</sup> International 23-27, April 2001, pp. 776-790 to Buyya et al., in view of U.S. Patent No. 5,978,831 to Ahamed et al., further in view of U.S. Patent No. 7,194,741 to Tayyar et al.

This rejection is respectfully traversed. Applicants submit that the combined teachings of Rajkumar, Buyya et al., Ahamed et al. and Tayyar et al. fail to render obvious the method and system for allocating resources in a computer, as presently claimed. The Examiner is reminded that pursuant to MPEP, 8<sup>th</sup> Ed., 7<sup>th</sup> Rev. § 2142, to establish a prima facie case of obviousness, and thus sustain the rejection of a claim under 35 U.S.C. § 103(a), there must be a clear articulation of the reasons why Applicants’ claimed invention would have been obvious. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). The Supreme Court in *KSR* has further noted that an analysis supporting a rejection under 35 U.S.C. § 103(a) should be made explicit. Therefore, it is clear that an obviousness rejection “cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006). Moreover, “[t]o support the conclusion that the claimed invention is directed to obvious subject

matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” MPEP, 8<sup>th</sup> Ed. 7<sup>th</sup> Rev. § 706.02(j).

Specifically, Applicants submit that the combined teachings of Rajkumar, Buyya et al., Ahamed et al. and Tayyar et al. fail to obviate the claimed limitations of (i) determining whether a sufficient amount of one or more unallocated computing resources are available to fulfill all of said one or more requests and (ii) temporarily allocating said unallocated computing resources in accordance with said one or more requests; and (iii) temporarily allocating said unallocated computing resources in accordance with said one or more requests in accordance with an allocation criteria.

Applicants respectfully submit that the Examiner has based the current rejections on a misinterpretation of what is taught by Rajkumar. Rajkumar describes two types of categories to which resources are allocated, namely reservation activities and fixed-priority activities. See Rajkumar at paragraph [0023]. The Examiner has failed to consider that regardless in which category the resource is allocated, *all* resources in Rajkumar *are already allocated* to one of these two categories before any further action occurs. Thus, if there is a shortage of resources for a reserved activity, the resources will be *re-allocated* from the fixed-priority activity to the reserved activity. See i.d., at paragraph [0024]. This is in contrast to the present application, in which resources *that have not yet been allocated* to a request may be allocated to such a request as needed. Further, the Examiner alleges that the claimed limitation of determining whether a sufficient amount of one or more unallocated computing resources are available to fulfill all of said one or more requests, “[w]hile not explicitly disclosed in Rajkumar...would be obvious since Rajkumar seeks to provide timely processing to all tasks”. Final Office Action at page 16. Applicants again point out that all of the tasks in Rajkumar have already been allocated. Contrary to the Examiner’s allegations, Applicants submit that determining whether a sufficient amount of one or more unallocated computing resources are available to fulfill all of said one or more requests would not be obvious in view of Rajkumar, as there are no unallocated resources in Rajkumar.

Even assuming *arguendo* that Rajkumar describes unallocated resources, a position denied by Applicants, Rajkumar fails to obviate the additional limitation that the unallocated resources be temporarily allocated to a request.

Applicants further submit that the Examiner relies upon Buyya et al. solely for allegedly teaching the monetary costs associated with the resources; Ahamed et al. solely for allegedly teaching resources comprising a first and second type of processing device having different capabilities; and Tayyar et al. solely for allegedly teaching that each reservation specifies an amount for use of the first and second type of processing device in a normalized unit of processing capability, and therefore fail to cure the deficiencies of Rajkumar described above.

b. Rajkumar in view of Buyya et al., Ahamed et al., and Tayyar et al. further in view of Schweitzer et al.

In the Final Office Action, the Examiner rejected claims 4-21, 29-34, 37, 48-51, 64-69 and 72 under 35 U.S.C. § 103(a) as being unpatentable over Rajkumar in view of Buyya et al., Ahamed et al., and Tayyar et al. and further in view of U.S. Patent No. 6,418,467 to Schweitzer et al.

This rejection is respectfully traversed. Applicants submit that the combined teachings of Rajkumar, Buyya et al., Ahamed et al., Tayyar et al. and Schweitzer et al. fail to render obvious the method and system for allocated resources in a computer, as presently claimed.

For the reasons discussed *supra*, Applicants submit that the combined teachings of Rajkumar, Buyya et al., Ahamed et al. and Tayyar et al. fail to obviate the claimed limitations of (i) determining whether a sufficient amount of one or more unallocated computing resources are available to fulfill all of said one or more requests and (ii) temporarily allocating said unallocated computing resources in accordance with said one or more requests; and (iii) temporarily allocating said unallocated computing resources in accordance with said one or more requests in accordance with an allocation criteria.

Applicants further submit that Schweitzer et al. is relied upon by the Examiner solely for allegedly teaching monitoring a usage level for at least a position of the computing resources of the distributed computing system, and therefore fails to cure the deficiencies of Rajkumar, Buyya et al., Ahamed et al. and Tayyar et al. discussed above.

Accordingly, Applicant respectfully requests that the rejections under 35 U.S.C. § 103(a) be removed.

### **III. Conclusion**

In view of the arguments presented, it is believed that all claims are in condition for allowance. If the Examiner believes that issues may be resolved by a telephone interview, the Examiner is invited to telephone the undersigned at (973)597-6162. The undersigned also may be contacted via e-mail at [epietrowski@lowenstein.com](mailto:epietrowski@lowenstein.com). All correspondence should be directed to our address listed below.

### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to Deposit Account No. 50-1358.

Respectfully submitted,  
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